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IN THE

Supreme Court of the United States

September Term, 1971

No. 71-418

ALAN D. MILLER, M.D. as Commissioner of Mental Hygiene of the State of New York; ALEXANDER THOMAS, M.D. as Director of the Psychiatric Division, Bellevue Hospital Center; FRANCIS J. O'NEILL, M.D. as Director of Central Islip State Hospital; and doctors on the staffs of Bellevue Hospital and Central Islip State Hospital whose names are unknown to plaintiff,

Petitioners,

vs.

MIRIAM WINTERS, on behalf of herself and all other persons similarly situated,

Respondent.

BRIEF FOR THE HOSPITAL ASSOCIATION OF NEW YORK STATE, INC. AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Interest of the Hospital Association of New York State, Inc. 1

Statement of the Case 3

Summary of Argument 4

Why the Petition Should be Granted 5

POINT A — The United States Court of Appeals for the Second Circuit has decided a question of federal constitutional law relating to the rights of inmates of mental institutions which has not been but ought to be settled by this Court rather than by any court below. 5

POINT B — The decision of the Court below is ambiguous and unclear in important respects to a degree which will significantly hamper effective administration of mental health care. 8

Conclusion 12

TABLE OF CASES CITED

Jacobson v. *Massachusetts*, 197 U.S. 11 (1904) 7

Prince v. *Massachusetts*, 321 U.S. 158 (1943) 5, 6, 7

Reynolds v. *United States*, 98 U.S. 145 (1878) 6, 9

TABLE OF STATUTES CITED

New York Mental Hygiene Law §§72(1), 78(1) 3, 10

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Interest of the Hospital Association of New York State, Inc.

The Hospital Association of New York State, Inc. is an association of voluntary and public hospitals located in the State of New York. A principal objective of the Hospital

Association is to promote the development and maintenance of the highest standards of hospital and health care through high quality and efficient hospital practices and administration. In order to achieve this objective, the Association keeps abreast of legal developments relating to hospitals and interprets these developments for its members. Only in a climate in which hospital administrators and professional personnel are secure in the knowledge of the status of laws relating to their practices, procedures and responsibilities can hospitals most effectively provide the services and care to which the public is entitled.

Accordingly, the Hospital Association of New York State, Inc. has a vital interest in seeking review of the decision of the United States Court of Appeals for the Second Circuit below. If that decision is left undisturbed it will tend to put an umbrella of significant uncertainty on the environment of any hospital in New York State ministering to mental illness. If the uncertainties inherent in the decision below are permitted to stand, there is a real danger that the particular needs of the mentally ill may become subordinated to an understandable desire of hospital staff to avoid disruptive, expensive litigation. An atmosphere permeated with constant concern over the risks of legal action, real or fancied, justified or not, is hardly an atmosphere suited to the providing of high quality health care.

Attorneys for the petitioners and respondent have consented to the filing of this brief. Executed consent forms for this purpose have been filed with the Clerk of the Court in accordance with Rule 42 of this Court.

Statement of the Case

Miriam Winters brought this action against the Commissioner of Mental Hygiene of the State of New York, the Director of the Psychiatric Division, Bellevue Hospital Center and the Director of Central Islip State Hospital. Insofar as is here relevant, she claimed damages resulting from the administration to her of medication during the time she was a patient at Bellevue and later at Central Islip State Hospital. It has been Miss Winters' contention that at all times material she was a practicing Christian Scientist and as such her religion forbade her from receiving any type of medication. In accordance with the procedures set forth in Section 78(1) of the New York Mental Hygiene Law, Miss Winters was involuntarily admitted to Bellevue Hospital Center allegedly suffering from mental illness. Subsequently, and in accordance with Section 72(1) of the Mental Hygiene Law, Miss Winters was committed to Central Islip State Hospital. Miss Winters has never contested the legality or constitutionality of her involuntary commitment to either Bellevue or Central Islip State Hospital. Her argument has been that at both of these institutions medication was administered to her without her consent and over her protest all in violation of her First Amendment right to freedom of religion.

The United States District Court for the Eastern District of New York granted defendants' motion to dismiss the complaint and for summary judgment, holding that plaintiff's right to practice her religion had to be tempered by the public right to be free from any danger of harm which plaintiff might inflict in an unmedicated state. The Court of Appeals for the Second Circuit reversed, holding that in the absence of a judicial determination of incompetence the defendants violated plaintiff's constitutional right to

freedom of religion by forcing her to take medication to which she objected on religious grounds. Judge Moore dissented, writing that in his view the hospitals in question acted properly in order to protect against the infliction of harm by plaintiff either to herself or to others. Judge Moore also dissented vigorously from the finding of the Court, implicit in its decision, that the named defendants, the Commissioner of Mental Health and the two hospital directors, could be held individually liable although there was no evidence that they had any direct knowledge of Miss Winters' case.

Summary of Argument

The decision below raises very significant issues. It is a case of first impression and the courts below have recognized that fact. *Winters* v. *Miller,* 306 F. Supp. 1158, 1167 (E.D.N.Y. 1969). In this brief we argue that the Court of Appeals for the Second Circuit has decided an important question of federal constitutional law which has not been, but should be, settled by this Court since it would, if left undisturbed, cause debilitating confusion in the administration of mental health programs throughout the State of New York. We do not take up the points ably argued by counsel for the petitioners herein except to adopt the views of petitioners and to concur in their arguments as follows: that the decision of the Court of Appeals is a radical departure from decisions of this Court which have permitted curtailment of First Amendment rights where there is a compelling state interest; that the decision of the Court of Appeals drastically conflicts with New York State law and practice in regard to the care of mentally ill citizens; and that money damages against the named defendants are completely inappropriate since there was no showing that

they personally condoned or were even aware of the medication of plaintiff. Nor do we here take up the merits of the controversy between the parties except to state that we anticipate that if the petition is granted we will file a brief covering all the issues to which the writ is directed.

Why the Petition Should be Granted

POINT A

The United States Court of Appeals for the Second Circuit has decided a question of federal constitutional law relating to the rights of inmates of mental institutions which has not been but ought to be settled by this Court rather than by any court below.

This Court frequently has dealt with the problem of balancing an individual's First Amendment rights to freedom of religion against the secular interests of society as a whole. The Court has not, however, spoken to the specific question of whether an individual hospitalized for mental illness can resist medical treatment on religious grounds.

Prior decisions of the Court have held that when an individual's religious practices create even a remote possibility of harm to the public, those practices may properly be prohibited or controlled by government for the common good. In *Prince* v. *Massachusetts,* 321 U.S. 158 (1943) the Court found that the State of Massachusetts had an overriding public interest in the protection of children through the enforcement of child labor laws, albeit in some instances the laws conflicted with the religious tenets of Jehovah's Witnesses. In *Prince,* a Jehovah's Witness claimed a denial of religious liberty when she was convicted for permitting

her minor ward to offer religious tracts for sale on the streets in conformity with her belief from the scriptures: "A child shall lead them." *Id.* at 164. The fact that the threat of danger to the child may have been slight since she was at all times accompanied by an adult was deemed irrelevant by the Court. The appellant argued that state action must fall when it impinges on a claimed religious freedom unless shown to be necessary to protect against "some clear and present danger". *Id* at 167. The Court rejected this argument and held that although the likelihood of injury might be slight, the possibility that the prohibited activity could be injurious was justification for state action.

As early as 1878 the Court wrestled with the difficulties of weighing religious liberties against laws enacted for the organization of society. In *Reynolds* v. *United States,* 98 U.S. 145 (1878) the Court was asked to upset a conviction for bigamy on the grounds that the appellant was a member of the Mormon Church enjoined by his religion to engage in polygamous relationships. The Court rejected his argument.

> Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices . . .[I]f a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? *Id.* at 166.

Although the Court could point to no immediate or definite harm which would arise from the religiously motivated polygamous union, it was its view that the mere possibility of disruption to the social life of the nation was reason enough to uphold the contested statute.

In *Jacobson* v. *Massachusetts,* 197 U.S. 11 (1904) the issue was whether the State could compel an individual to be vaccinated against his will. The appellant argued that he believed vaccination was harmful and did not prevent the spread of disease. The Court conceded that perhaps the appellant was correct in his belief, but nonetheless disregarded that argument as irrelevant.

> The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adopted to prevent the spread of contagious disease. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action; for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not. *Id.* at 35.

The petition herein is important because the decision of the Court of Appeals below departs from the reasoning of this line of cases and holds, instead, that the mere possibility of harm to self or to others is insufficient cause to restrict an individual in his religious practices.

In all of those cases cited and in many others[1], the Court has been asked to define the bounds of individual liberties in relation to the state's interest in ordering society for the public good. This Court has seen as its obligation the task of "narrowing the no man's land where this battle has gone on." *Prince* v. *Massachusetts, supra* at 165. We are here asking this Court to again enter the "no man's

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[1]See the decision of the District Court, Judge Travia, and the brief of petitioners herein.

land'' in order to resolve this latest conflict: can a hospital, in caring for an individual suffering from mental illness, administer professionally indicated medication despite the individual's objections to such treatment on religious grounds? The Hospital Association of New York State, Inc. is here to enter its earnest plea with the Court to clarify this issue so that its members may have the knowledge they need to effectively serve the public.

POINT B

The decision of the Court below is ambiguous and unclear in important respects to a degree which will significantly hamper effective administration of mental health care.

Whereas a licensed doctor could once rely on his professional training and judgment to guide him in his decisions on patient care, in light of a growing concern with expensive litigation, he must now also concern himself with how a judge and jury are going to construe his conduct. The decision below creates so many ambiguities, that a lawyer, let alone a doctor, would have difficulty ferreting out a proper course.

As best we can ascertain, the decision of the Court below holds that despite the possibility of injury to a patient or to others and despite concededly proper commitment to an institution for the care of the mentally ill, in the absence of a judicial determination of incompetency, a hospital or physician *may* not be justified in administering medication to a patient against the will of that patient if the patient's objection is based on religious belief. The decision of the Court is unclear, however, in that it leaves open the possibility that involuntary administration of

medication *may* be proper in a case where there is proof that a patient would cause injury if her religious beliefs were respected. Operation of a hospital for the mentally ill with the state of the law left in that quandary will be unnecessarily and perhaps harmfully left uncertain.

Does the decision mean that in some cases of persons found to be mentally ill, but not declared incompetent, medication can be administered despite the objections of the patient? If medication is proper in certain situations, who is to determine when such a situation exists? In this case there was considerable documentation of the patient's history and mental illness, all as set forth in the decision of the District Court. Yet the Court of Appeals found that history insufficient to warrant involuntary medication. How ill must a patient be before a doctor can validly decide that the patient is likely to cause injury if he is not restrained by the use of medication? The Court of Appeals for the Second Circuit sets no test, suggests no criteria, nor does it tell hospitals who should make the decision.

Does the decision mean that a mental patient can successfully resist medication for any reason or only for a religious reason? Always before this Court has held that a religious belief does not excuse otherwise unacceptable practices. See *Reynolds* v. *United States, supra* wherein the Court wrote: "To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.* at 167.

The Court of Appeals, in emphasizing that Miss Winters was never adjudicated incompetent and that therefore she should not have been medicated against her will, seems to be saying that a patient suffering from mental illness should

have all the prerogatives to refuse treatment that the law recognizes for competent adult patients with physical ailments. The irrationality of that position is thoroughly discussed by Judge Moore in his dissenting opinion below. Moreover, New York, in its Mental Hygiene Law, has stated specifically that persons apparently suffering from mental illness may be hospitalized against their will. The constitutionality of §§72 and 78 of the Mental Hygiene Law, pursuant to which Miss Winters was committed, has never been questioned in this proceeding. Given the responsibility to bring the mentally ill involuntarily into hospitals, there must be the concomitant authority to prevent these patients from injuring themselves or their fellows and to minister to them accordingly. We prefer the reasoning of the District Court below and urge this Court to adopt it:

> In mental illness cases, the public interest in treating and curing patients is greater than the public interest is in cases of physical illness. *Winters* v. *Miller,* 306 F. Supp. 1158, 1167 (E.D.N.Y. 1969).

The Court of Appeals decision relied at least in part on Miss Winters' argument that since she had been a Christian Scientist for many years before her commitment, her decision to reject medical treatment was made before any allegation of mental illness. Does the decision thereby mean that if a hospital knows a patient previously objected to treatment when she was sane, that it must be assumed that she still objects, despite her present mental state? Such a conclusion is ludicrous in the context of an institution for the mentally ill. Surely the Court below is not suggesting that a violent, albeit religious, patient may not be restrained by medication when there is no other reasonable method to prevent her from attacking or harming others, regardless of her religion. Moreover, how is a

mental institution to reliably discern what are the pre-illness beliefs of any patient?

Next the Court of Appeals says that there was no right on the part of defendants to administer medication to Miss Winters because there was no "clear interest, either on the part of society as a whole or at least in relation to a third party, which would be substantially affected by permitting the individual to assert what he claimed to be his 'free exercise' rights". Does the decision thereby mean that the physician in charge of the patient must be prepared to prove, in a court of law, that the patient would have done harm to third persons if not restrained by the use of medication? What do the doubts raised by that holding do for the effective operation of hospitals?

The ambiguities raised by the Court of Appeals decision are many. Given the importance of proper care for the mentally ill, and given this Court's previous dedication to the task of narrowing the "no man's land" between legitimate state interest and individual liberty, the Court should settle the questions raised below.

CONCLUSION

The decision of the Court below decides an important question of federal law which has not been but should be settled by this Court. The lower Court decision raises several ambiguities and is in apparent conflict with other decisions of this Court and with present law and practice in the State of New York. The issue is one of manifest legal and practical importance and for all the foregoing reasons should be decided by this Court.

Respectfully submitted,

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